

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

ABDELFATTAH ZARHOUNI

Appellant

v.

STATE OF MISSOURI

Respondent

DOCKET NUMBER **WD71071**

DATE: June 22, 2010

Appeal From:

Circuit Court of Boone County, MO
The Honorable Kevin Micajah Joseph Crane, Judge

Appellate Judges:

Division Four: Thomas H. Newton, C.J., James E. Welsh, and Alok Ahuja, JJ.

Attorneys:

Alexa I. Pearson, Columbia, MO

Counsel for Appellant

Attorneys:

Shaun J. Mackelprang, Jefferson City, MO

Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

ABDELFATTAH ZARHOUNI, Appellant, v.
STATE OF MISSOURI, Respondent

WD71071

Boone County

Before Division Four Judges: Thomas H. Newton, C.J., James E. Welsh, and Alok Ahuja, JJ.

Abdelfattah Zarhouni pled guilty to second-degree assault. Pursuant to a plea agreement, the State did not oppose Zarhouni's request to serve 120 days shock time in prison followed by probation. However, the plea court denied probation, sentenced Zarhouni to seven years imprisonment, and ordered him to pay restitution of \$9,000. Zarhouni sought post-conviction relief, which the motion court denied. Zarhouni appeals, raising two points.

AFFIRMED AS MODIFIED.

Division Four holds:

In his first point Zarhouni argues that the plea court exceeded its authority in sentencing him to serve seven years and ordering him to pay restitution. Section 557.021 enumerates the trial court's authorized dispositions on a finding of guilt and does not include authorizing the trial court to impose a prison sentence while also requiring restitution. Section 559.100 authorizes the court to order restitution as a condition of probation or parole, but it does not grant the trial court authority to order restitution as a future condition of a later grant of parole. Because the plea court ordered both imprisonment and restitution, it exceeded its authority. Point one is granted.

In his second point Zarhouni argues that he was denied effective assistance of plea counsel because his plea counsel erroneously informed him that he would receive a 120-day shock time and he did not know he would have to serve seven years. A guilty plea must be a voluntary expression of the defendant's choice, and a knowing and intelligent act done with sufficient awareness of the relevant circumstances and likely consequences. Plea counsel may be ineffective if counsel's actions rendered the defendant's plea unknowing or involuntary because of counsel's mistaken representation about sentencing. At his plea hearing, Zarhouni testified he understood the consequences of his plea. Therefore, the record does not support his contention. Point two is denied.

We therefore modify the judgment to strike the portion requiring restitution and otherwise affirm.

Opinion by: Thomas H. Newton, Judge

June 22, 2010

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